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10/733,110	12/11/2003	Howard Sommerfeld	CRD 01145	7895

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EXAMINER	
MCCARRY JR, ROBERT J	
ART UNIT	**PAPER NUMBER**
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/733,110
Filing Date: December 11, 2003
Appellant(s): SOMMERFELD, HOWARD

Michele K. Yoder
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 20, 2006 appealing from the Office action mailed July 7, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,590,797	Duffy et al	1-1997

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Double Patenting

Claims 1-17 are rejected under the judicially created doctrine of double patenting over claims 1, 3, 5, 7-10 and 12 of U. S. Patent No. 5,590,797 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: The instant application recites the features of a friction clutch mechanism for a type of draft gear. The prior art discloses the same friction clutch draft gear assembly as is evident from the figures and the claims. The claims of the prior art show the same features as the claims recited in the instant application. However, the claims of the prior art show the tapered surfaces to be tapered at an angle between 46.5 and 48.5 degrees while the claims of the application recite the tapered surfaces to be tapered at an angle between 49 and 50 degrees. It would have been obvious to one of ordinary skill in the art to see that this change in angle is minimal and would have been obvious to adjust the components slightly for fine-tuning of the device. The instant claims of the application also recite a preselected lubricating metal with at least 2% graphite. The prior art discloses a preselected metal lubricant for the various insert members. It would have been obvious to one of ordinary skill in the art to understand that since the prior art recites a preselected metal lubricant it is broader than the instant claims and therefore would encompass a metal lubricant with graphite.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application, which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duffy et al (US 5,590,797).

Duffy et al discloses all of the limitations for a friction clutch mechanism for a draft gear assembly. The instant application recites the features of a friction clutch mechanism for a type of draft gear. The prior art discloses the same friction clutch draft gear assembly as is evident from the figures and the claims. The claims of the prior art show the same features as the claims recited in the instant application. However, the claims of the prior art show the tapered surfaces to be tapered at an angle between 46.5 and 48.5 degrees while the claims of the application recite the tapered surfaces to be tapered at an angle between 49 and 50 degrees. It would have been obvious to one of ordinary skill in the art to see that this change in angle is minimal and would have been obvious to adjust the components slightly for fine-tuning of the device. The instant claims of the application also recite a preselected lubricating metal with at least 2%

graphite. The prior art discloses a preselected metal lubricant for the various insert members. It would have been obvious to one of ordinary skill in the art to understand that since the prior art recites a preselected metal lubricant it is broader than the instant claims and therefore would encompass a metal lubricant with graphite.

(10) Response to Argument

Applicant argues the Double Patenting rejection and the rejection under 35 USC 103 (a) with the use of prior art of Duffy et al (US 5,590,797). For clarification purposes the Examiner has applied an obviousness double patenting rejection.

Applicant argues that the prior art and the instant application are in fact different since it would not be obvious to one of ordinary skill in the art to adjust the wedge shoe members. The claimed invention states that the range is "between about 49.0 degrees and about 50.0 degrees." The range recited in claim 1 of the prior art is specifically "between 46.5 degrees and 48.5 degrees," Comparing the prior art and the instant claims the Examiner feels it would be obvious to fine tune the wedge members from 48.5 degrees to a range "between about 49.0 degrees and about 50.0 degrees". The Examiner also feels that one of ordinary skill in the art would clearly understand that 48.5 degrees could be rounded up to 49 degrees based on how meticulous the measurement needs to be and the working parameters of the device. It would also be obvious to one of ordinary skill in the art to understand that 48.5 degrees is in fact "about 49.0 degrees" as recited in claim 1.

Applicant also argues that it is not obvious to use the prior art of Duffy et al to show that the lubricating members include at least 2% graphite. The prior art calls for

lubricating members including a "requisite amount of lubrication necessary". The instant claims recite "pre-selected lubricating metal and at least 2% graphite." As stated above by the Examiner, it would have been obvious to one of ordinary skill to understand that graphite could be a preselected metal to make up a small portion of the requisite amount of lubrication.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Robert J. McCarry Jr.
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